IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3307 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE CO. LTD. - Appellant(s)
Versus
MOHAMMAD FARUK HAJI HAKIM SHAIKH & 2 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1,
None for Defendant(s) : 2,3

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 09/08/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

ADMIT.

2. On earlier occasion, by order dated 12th July, 2007, notice for final disposal was issued by this court in the appeal. Pursuant to the notice, learned advocate Mr. Hakim has appeared on behalf of the respondent no.1.

3. We have heard learned advocate Ms. Kapadia on behalf of Ms. Jani for the appellant and learned advocate Mr. Hakim for respondent no.1.

4. It is clear from the memo of appeal that the appeal is filed only to challenge the award of interest on the amount of compensation awarded towards future medical expenses on artificial limb and future dressing and maintenance/replacement of socket etc. The amounts under these two Heads are Rs.2,60,000/- and Rs.1,75,000/- respectively. The insurance company does not challenge the award of compensation under any of the Heads but challenges the award of interest on the compensation for future treatment in light of the decision in case of **R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. [1995 (1) SCC 551]**.

5. In the said judgment, the Apex Court observed thus:-

> “So far the direction of the High Court regarding payment of interest at the

> rate of 6% over the total amount held to be payable to the appellant is concerned, it has to be modified. The High Court should have clarified that the interest shall not be payable over the amount directed to be paid to the appellant in respect of future expenditures under different heads. It need not be pointed out that interest is to be paid over the amount which has become payable on the date of award and not which is to be paid for expenditures to be incurred in future. As such we direct that appellant shall not be entitled to interest over such amount."

6. In light of the above observations of the Apex Court, in our view, the appeal merits acceptance so far as the amounts of compensation awarded for purchase of limb, maintenance of and/or replacement of the socket which are Rs.2,60,000/- and Rs.1,75,000/- respectively. The award, therefore, needs to be modified only to the extent that no interest would be payable on the above amounts.

7. It was contended by learned advocates for both the sides that the rate of interest awarded is not proper. According to the appellant, the rate of interest ought to have been 6% whereas according to the respondent, it ought to have been 9%, in light of the recent trend. In our view, the say of the

respondent cannot be accepted because the respondent has not challenged the rate of interest awarded. So far as the appellant's case is concerned, we find that the Tribunal has considered relevant aspects. The present rate of interest on Fixed Deposits in bank is 9.5% and keeping that aspect in mind, we are of the view that the award of interest at the rate of 7.5% cannot be considered to be unjust. Under the circumstances, contention of the appellant on that aspect cannot be accepted.

8. The appeal, therefore, stands partly allowed. The award of interest by the Motor Accident Claims Tribunal (Aux.), Vadodara in M.A.C.P. No.640/2004 at the rate of 7.5% on future treatment amounts of Rs.2,60,000/- and Rs.1,75,000/- totalling to Rs.4,35,000/- is set aside. Rest of the award stands confirmed. There shall be no order as to costs.

9. The amount of Rs.25,000/- deposited with this court shall stand transmitted to the Tribunal forthwith, if not already transmitted, pursuant to order dated 12th July, 2007.

10. It would be open for the appellant to claim refund of the interest amount that may have been deposited pursuant to the order of this court dated 12th July, 2007.

(A.L. Dave, J.)

(Sharad D. Dave, J.)

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